

AMENDED IN ASSEMBLY APRIL 22, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1077

Introduced by Assembly Member Wesson

February 20, 2003

An act to amend Sections 148.6, 832.5, and 13012 of the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1077, as amended, Wesson. Complaints against peace officers.

Existing law requires each department or agency in the state that employs peace officers, and authorizes each department or agency that employs custodial officers, to establish a procedure with specified guidelines to investigate complaints by members of the public against those officers.

This bill would require those complaint procedures to include, *but not be limited to*, (1) a method for filing a complaint ~~other than by personal appearance at a law enforcement location, including, but not limited to~~, by *either* United States mail, electronic mail, telephone, or facsimile machine, and (2) *a method of filing a complaint at a designated public location that is not a law enforcement location*.

By requiring departments and agencies employing peace officers to include specified complaint reporting options in their required complaint procedures, this bill would impose a state-mandated local program.

Existing law makes knowingly filing a false allegation pursuant to these complaint procedures a misdemeanor, and requires a law enforcement agency accepting a complaint to require the complainant

to read and sign a specified advisory concerning the complaint procedures.

This bill would require a law enforcement agency or any other agency or office that accepts complaints pursuant to these complaint procedures to require the complainant to sign the specified advisory, thereby imposing a state-mandated local program.

Existing law requires the Department of Justice to present a report to the Governor annually containing the criminal statistics of the preceding year. Among the statistics the department is required to report are the total number of citizen complaints of officer misconduct received by law enforcement agencies, the number alleging conduct of either a felony or misdemeanor, and the number sustained in each category. Existing law requires these statistics be reported by gross numbers only, and forbids reference to any individual agency.

This bill would require these statistics be reported in gross numbers, and by individual agency.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 148.6 of the Penal Code is amended to*
2 *read:*

3 148.6. (a) (1) Every person who files any allegation of
4 misconduct against any peace officer, as defined in Chapter 4.5
5 (commencing with Section 830) of Title 3 of Part 2, knowing the
6 allegation to be false, is guilty of a misdemeanor.

7 (2) Any law enforcement agency *or other agency or office*
8 accepting an allegation of misconduct against a peace officer as



provided in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, shall require the complainant to read and sign the following advisory, all in boldface type:

YOU HAVE THE RIGHT TO MAKE A COMPLAINT AGAINST A POLICE OFFICER FOR ANY IMPROPER POLICE CONDUCT. CALIFORNIA LAW REQUIRES THIS AGENCY TO HAVE A PROCEDURE TO INVESTIGATE CITIZENS' COMPLAINTS. YOU HAVE A RIGHT TO A WRITTEN DESCRIPTION OF THIS PROCEDURE. THIS AGENCY MAY FIND AFTER INVESTIGATION THAT THERE IS NOT ENOUGH EVIDENCE TO WARRANT ACTION ON YOUR COMPLAINT; EVEN IF THAT IS THE CASE, YOU HAVE THE RIGHT TO MAKE THE COMPLAINT AND HAVE IT INVESTIGATED IF YOU BELIEVE AN OFFICER BEHAVED IMPROPERLY. CITIZEN COMPLAINTS AND ANY REPORTS OR FINDINGS RELATING TO COMPLAINTS MUST BE RETAINED BY THIS AGENCY FOR AT LEAST FIVE YEARS.

IT IS AGAINST THE LAW TO MAKE A COMPLAINT THAT YOU KNOW TO BE FALSE. IF YOU MAKE A COMPLAINT AGAINST AN OFFICER KNOWING THAT IT IS FALSE, YOU CAN BE PROSECUTED ON A MISDEMEANOR CHARGE.

I have read and understood the above statement.

Complainant

(3) The advisory shall be available in multiple languages.

(b) Every person who files a civil claim against a peace officer or a lien against his or her property, knowing the claim or lien to be false and with the intent to harass or dissuade the officer from carrying out his or her official duties, is guilty of a misdemeanor. This section applies only to claims pertaining to actions that arise in the course and scope of the peace officer's duties.

SEC. 2. Section 832.5 of the Penal Code is amended to read:

1 832.5. (a) (1) Each department or agency in this state that
2 employs peace officers shall establish a procedure to investigate
3 complaints by members of the public against the personnel of these
4 departments or agencies, and shall make a written description of
5 the procedure available to the public.

6 (2) Each department or agency that employs custodial officers,
7 as defined in Section 831.5, may establish a procedure to
8 investigate complaints by members of the public against those
9 custodial officers employed by these departments or agencies,
10 provided however, that any procedure so established shall comply
11 with the provisions of this section and with the provisions of
12 Section 832.7.

13 (3) A procedure for receiving complaints by members of the
14 public as provided in this section must ~~permit~~ *include, but is not*
15 *limited to (1) a method of filing other than personal appearance at*
16 *a law enforcement location, including, but not limited to, by a*
17 *complaint by either United States mail, electronic mail, telephone,*
18 *or facsimile machine, and (2) a method of filing a complaint at a*
19 *designated public location that is not a law enforcement location.*

20 (b) Complaints and any reports or findings relating to these
21 complaints shall be retained for a period of at least five years. All
22 complaints retained pursuant to this subdivision may be
23 maintained either in the peace or custodial officer's general
24 personnel file or in a separate file designated by the department or
25 agency as provided by department or agency policy, in accordance
26 with all applicable requirements of law. However, prior to any
27 official determination regarding promotion, transfer, or
28 disciplinary action by an officer's employing department or
29 agency, the complaints described by subdivision (c) shall be
30 removed from the officer's general personnel file and placed in
31 separate file designated by the department or agency, in
32 accordance with all applicable requirements of law.

33 (c) Complaints by members of the public that are determined
34 by the peace or custodial officer's employing agency to be
35 frivolous, as defined in Section 128.5 of the Code of Civil
36 Procedure, or unfounded or exonerated, or any portion of a
37 complaint that is determined to be frivolous, unfounded, or
38 exonerated, shall not be maintained in that officer's general
39 personnel file. However, these complaints shall be retained in
40 other, separate files that shall be deemed personnel records for

purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and Section 1043 of the Evidence Code.

(1) Management of the peace or custodial officer's employing agency shall have access to the files described in this subdivision.

(2) Management of the peace or custodial officer's employing agency shall not use the complaints contained in these separate files for punitive or promotional purposes except as permitted by subdivision (f) of Section 3304 of the Government Code.

(3) Management of the peace or custodial officer's employing agency may identify any officer who is subject to the complaints maintained in these files which require counseling or additional training. However, if a complaint is removed from the officer's personnel file, any reference in the personnel file to the complaint or to a separate file shall be deleted.

(d) As used in this section, the following definitions apply:

(1) "General personnel file" means the file maintained by the agency containing the primary records specific to each peace or custodial officer's employment, including evaluations, assignments, status changes, and imposed discipline.

(2) "Unfounded" means that the investigation clearly established that the allegation is not true.

(3) "Exonerated" means that the investigation clearly established that the actions of the peace or custodial officer that formed the basis for the complaint are not violations of law or department policy.

~~SEC. 2.~~

SEC. 3. Section 13012 of the Penal Code is amended to read: 13012. The annual report of the department provided for in Section 13010 shall contain statistics showing all of the following:

(a) The amount and the types of offenses known to the public authorities.

(b) The personal and social characteristics of criminals and delinquents.

(c) The administrative actions taken by law enforcement, judicial, penal, and correctional agencies or institutions, including those in the juvenile justice system, in dealing with criminals or delinquents.

(d) The administrative actions taken by law enforcement, prosecutorial, judicial, penal, and correctional agencies, including

1 those in the juvenile justice system, in dealing with minors who are
2 the subject of a petition or hearing in the juvenile court to transfer
3 their case to the jurisdiction of an adult criminal court or whose
4 cases are directly filed or otherwise initiated in an adult criminal
5 court.

6 (e) The number of citizens' complaints received by law
7 enforcement agencies under Section 832.5. These statistics shall
8 indicate the total number of these complaints, the number alleging
9 criminal conduct of either a felony or misdemeanor, and the
10 number sustained in each category. The report shall contain
11 statistics in gross numbers, and broken down by individual agency.

12 It shall be the duty of the department to give adequate
13 interpretation of the statistics and so to present the information that
14 it may be of value in guiding the policies of the Legislature and of
15 those in charge of the apprehension, prosecution, and treatment of
16 the criminals and delinquents, or concerned with the prevention of
17 crime and delinquency. The report shall also include statistics
18 which are comparable with national uniform criminal statistics
19 published by federal bureaus or departments heretofore
20 mentioned.

21 ~~SEC. 3.~~

22 *SEC. 4.* Notwithstanding Section 17610 of the Government
23 Code, if the Commission on State Mandates determines that this
24 act contains costs mandated by the state, reimbursement to local
25 agencies and school districts for those costs shall be made pursuant
26 to Part 7 (commencing with Section 17500) of Division 4 of Title
27 2 of the Government Code. If the statewide cost of the claim for
28 reimbursement does not exceed one million dollars (\$1,000,000),
29 reimbursement shall be made from the State Mandates Claims
30 Fund.